WESTLAW

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Original Image of 559 N.W.2d 900 (PDF)

State ex rel. Jacobus v. State
Supreme Court of Wisconsin. | February 28, 1997 | 208 Wis.2d 39 | 559 N.W.2d 900 *(Approx. 12 pages)*

STATE of Wisconsin ex rel. Alexander L. JACOBUS, Petitioner–Appellant,

v.

STATE of Wisconsin, Respondent–Respondent–Petitioner.

No. 94–2995.
Submitted on Briefs Dec. 5, 1997.
Decided Feb. 28, 1997.

Synopsis

Petitioner sought writ of habeas corpus following revocation of his probation for disorderly conduct, operating motor vehicle while intoxicated (OMVWI), and bail jumping based on alcohol consumption. The Circuit Court, Monroe County, Michael J. McAlpine, J., denied petition. Petitioner appealed. The Court of Appeals, Dykman, J., 198 Wis.2d 783, 544 N.W.2d 234, reversed and remanded. State appealed. The Supreme Court, N. Patrick Crooks, J., held that bail jumping prosecution for consuming alcohol in violation of bond condition did not violate statute prohibiting prosecution for consumption of alcoholic beverages.

Reversed.

West Headnotes (11)

Change View

1 **Criminal Law**
"*Alford* plea" is guilty or no contest plea in which defendant either maintains his or her innocence or does not admit that he or she committed the crime.

12 Cases that cite this headnote

110	Criminal Law
110XV	Pleas
110k272	Plea of Guilty
110k273	In General
110k273(4)	Requisites and Proceedings for Entry
110k273(4.1)	In general

110	Criminal Law
110XV	Pleas
110k275	Plea of No Contest or Nolo Contendere
110k275.2	Nature and effect of plea (Formerly 110k275)

SELECTED TOPICS

Bail

In Criminal Prosecutions
Indictment Charge Defendant

General Rules of Construction

Initial Examination of the Current Language of the Statute

Criminal Law

Counsel
Affirmative Defense of Voluntary Intoxication

Secondary Sources

APPENDIX B: FEDERAL REGULATIONS

Employer's Guide to the Health Insurance Portability and Accountability Act Appendix B

...Editor's Note: Many of HIPAA's portability rules, as finalized Dec. 30, 2004 (69 Fed. Reg. 78763), were superseded or rendered moot by the Affordable Care Act (ACA), which required the outright elimina...

Modern status of the rules as to voluntary intoxication as defense to criminal charge

8 A.L.R.3d 1236 (Originally published in 1966)

...This comment examines a selection of the more recent cases to determine the present status (1966) of the rules as to the effect of voluntary intoxication from the use of alcohol upon the determination ...

APPENDIX III-JUDICIAL OPINIONS

FDA Enforcement Man. Appendix III

...No. 74-215 Supreme Court of the United States 421 U.S. 658; 95 S. Ct. 1903 2d 489 Argued March 18-19, 1975 June 9, 1975 Mr. Chief Justice Burger delivered the opinion of the Court. We granted certiorar...

See More Secondary Sources

Briefs

Robert WAYNE SAWYER, Petitioner, v. John P. WHITLEY, Respondent.

1991 WL 11009393
Robert WAYNE SAWYER, Petitioner, v. John P. WHITLEY, Respondent.
Supreme Court of the United States
Dec. 30, 1991

...FN* Counsel of Record Opinion of the Louisiana Supreme Court, October 18, 1982 Order of the Louisiana Supreme Court, February 10, 1983 Opinion of the United States Supreme Court, Remanding to the Louis...

BRIEF FOR PETITIONER

1996 WL 19035
State of Montana v. James Allen Egelhoff
Supreme Court of the United States
Jan. 18, 1996

...The opinion of the Montana Supreme Court is reported at State v. Egelhoff, 900 P.2d 260 (Mont.1995). (Pet.App.1a-26a.) The state court opinion was filed on July 6, 1995. (Pet.App.1a-26a.) The petition...

2 **Habeas Corpus**

Grant of habeas corpus under State and Federal Constitutions is confined to situations in which there is pressing need for relief or where process or judgment upon which prisoner is held is void and, therefore, writ will not be granted when other adequate remedies at law exist. U.S.C.A. Const. Art. 1, § 9, cl. 2; W.S.A. Const. Art. 1, § 8(4).

2 Cases that cite this headnote

197	Habeas Corpus
197I	In General
197I(C)	Existence and Exhaustion of Other Remedies
197k271	In general
197	Habeas Corpus
197II	Grounds for Relief; Illegality of Restraint
197II(A)	Ground and Nature of Restraint
197k447	Deprivation of fundamental or constitutional rights; miscarriage of justice

3 **Criminal Law**

Statutory interpretation presents question of law which Supreme Court reviews de novo, without deference to decision of lower court.

1 Case that cites this headnote

110	Criminal Law
110XXIV	Review
110XXIV(L)	Scope of Review in General
110XXIV(L)13	Review De Novo
110k1139	In general

4 **Statutes**

Goal of statutory interpretation is to ascertain legislature's intent, to which court must give effect, looking no further, if it is clear from plain language of statute.

7 Cases that cite this headnote

361	Statutes
361III	Construction
361III(C)	Clarity and Ambiguity; Multiple Meanings
361k1107	Absence of Ambiguity; Application of Clear or Unambiguous Statute or Language
361k1111	Plain language; plain, ordinary, common, or literal meaning
	(Formerly 361k181(1))

5 **Statutes**

If statute is ambiguous, court must examine its scope, history, context, subject matter, and object in order to determine legislature's intent.

9 Cases that cite this headnote

361	Statutes
361III	Construction
361III(C)	Clarity and Ambiguity; Multiple Meanings
361k1103	Resolution of Ambiguity; Construction of Unclear or Ambiguous Statute or Language
361k1105	Purpose and intent; determination thereof
	(Formerly 361k190)

JOINT APPENDIX, VOL. I

2018 WL 4144904
Luis A. NIEVES and Bryce L. Weight, Petitioners, v. Russell P. BARTLETT, Respondent.
Supreme Court of the United States
Aug. 20, 2018

...Disorderly Conduct [90C] 04/13/2014 01:57 - 04/13/2014 02:42 04/13/2014 01:57 210 RICHARDSON HIGHWAY, PAXSON, Unorganized Borough AK USA 99737 (Beat/zone: HHHH) Closed by arrest On 4/13/14 at approxima...

See More Briefs

Trial Court Documents

Medical Laboratory Management Consultants v. American Broadcasting Cos, Inc.

1998 WL 35174273
MEDICAL LABORATORY MANAGEMENT CONSULTANTS d/b/a Consultants Medical Lab, et al., Plaintiffs, v. AMERICAN BROADCASTING COMPANIES, INC., et al., Defendants.
United States District Court, D. Arizona.
Dec. 23, 1998

...FN1. A cytotechnologist is a medical laboratory technologist who examines cells under a pathologist's supervision in order to diagnose cancer or other diseases. FN2. John and Carolyn Devaraj are Medica...

U.S. v. Mallory

2010 WL 9067895
UNITED STATES OF AMERICA, v. Lloyd MALLORY, Defendant.
United States District Court, E.D. Virginia.
June 11, 2010

...USM Number: 73608-083 The defendant was found guilty as to Counts 1 and 7 of the Superseding Indictment. The defendant is adjudicated guilty of these offenses: The defendant has been found not guilty a...

U.S. v. Prum

2015 WL 13937323
UNITED STATES OF AMERICA, v. Boseba PRUM.
United States District Court, D. Massachusetts.
Apr. 01, 2015

... pleaded guilty to count(s) 1,2,3,4,5,6,7,8,9,10,11,36,37,38,39,40,41,42,43,44,45,46,47,48 and 49 pleaded nolo contendere to count(s) which was accepted by the court. _ was found guilty on count(s) ...

See More Trial Court Documents

6 **Statutes**

Statute is “ambiguous” if it is capable of being understood by reasonably well-informed persons in more than one way; in addition, interaction of two statutes can create ambiguity, as can interaction of words in statute.

6 Cases that cite this headnote

361	Statutes
361III	Construction
361III(C)	Clarity and Ambiguity; Multiple Meanings
361k1102	What constitutes ambiguity; how determined
	(Formerly 361k190)

361	Statutes
361III	Construction
361III(G)	Other Law, Construction with Reference to
361k1210	Other Statutes
361k1211	In general
	(Formerly 361k190)

7 **Criminal Law**

Subsection of statute prohibiting criminal prosecution of alcoholics and intoxicated persons on basis of their consumption of alcoholic beverages is “ambiguous”; on its face, subsection arguably prohibits criminal prosecution for bail jumping on basis of alcohol consumption in violation of condition of bond, whereas opposite conclusion may be drawn from its interaction with subsection exempting any law whose violation is punishable by fine or imprisonment. W.S.A. 51.45(1), (17)(a), 946.49.

4 Cases that cite this headnote

110	Criminal Law
110VI	Capacity to Commit and Responsibility for Crime
110k52	Intoxication
110k53	In general

8 **Criminal Law**

Purpose of statute prohibiting subjection of alcoholics and intoxicated persons to criminal prosecution on basis of their consumption of alcoholic beverages is to prohibit their prosecution for petty crimes under statutes for which public drunkenness constitutes gravamen of offense. W.S.A. 51.45(1).

110	Criminal Law
110VI	Capacity to Commit and Responsibility for Crime
110k52	Intoxication
110k53	In general

9 **Bail**

Prohibiting defendant from consuming alcohol as condition of release bond accords with plain purpose of bail jumping law, which is to enhance effective administration of justice as well as deter those who have been released, pending disposition of criminal charges, from violating bond conditions imposed to protect members of community from serious bodily harm, prevent intimidation of witnesses, assure defendant's future appearance in court, and prevent defendant from violating the law. W.S.A. Const. Art. 1, § 8(2); W.S.A. 946.49, 969.01(1), 969.02(3)(d), (4), 969.03(1)(e), (2).

3 Cases that cite this headnote

49	Bail
49II	In Criminal Prosecutions
49k54	Bond, Undertaking, or Recognizance
49k59	Conditions and obligations

10 **Bail**

Focus of prosecution for bail jumping is on fact that defendant has violated condition of bond and not on underlying act; thus, conviction under bail jumping statute requires state to prove only that defendant was released from custody on bail and that he or she intentionally failed to comply with terms of bond. W.S.A. 946.49.

7 Cases that cite this headnote

49	Bail
49II	In Criminal Prosecutions
49k97	Bail Jumping as Offense
49k97(1)	In general

11 **Bail**

Statute prohibiting criminal prosecution of alcoholics and intoxicated persons for consuming alcoholic beverages did not prohibit prosecution for bail jumping of defendant who consumed alcohol in violation of condition of bond, as public drunkenness was not gravamen of bail jumping offense; defendant was prosecuted for failing to comply with bond condition not for public drunkenness or consumption of alcohol. W.S.A. 51.45(1), 946.49.

7 Cases that cite this headnote

49	Bail
49II	In Criminal Prosecutions
49k97	Bail Jumping as Offense
49k97(1)	In general

Attorneys and Law Firms

***901 *43** For the respondent-respondent-petitioner there were briefs by William C. Wolford, Assistant Attorney General, with whom on the briefs was James E. Doyle, Attorney General.

For the petitioner-appellant there were briefs by Alexander L. Jacobus.

Amicus curiae was filed by John Allen Pray, Debra Kvalheim and Legal Assistance Program, University of Wisconsin Law School, in support of Alexander L. Jacobus.

Opinion

N. PATRICK CROOKS, Justice.

¶ 1 The State of Wisconsin (State) seeks review of a published decision of the court of appeals, [1] which reversed and remanded a judgment of conviction of the Circuit Court for Monroe County, Michael J. McAlpine, Judge. The court of appeals held that Wis. Stat. § 51.45(1) (1991–92) [2] ***44** prohibits the State from criminally prosecuting an individual under Wis. Stat. § 946.49 [3] for bail jumping due to consumption of alcohol in violation of a condition of a bond. We conclude that § 51.45(1) does not prohibit the criminal prosecution of an individual for bail jumping under these circumstances, and therefore we reverse the decision of the court of appeals.

I.

1 ¶ 2 The pertinent facts are not in dispute. Over a three month period in 1992, the State charged Alexander L. Jacobus (Jacobus) with one count of disorderly conduct, two counts of operating a motor vehicle while intoxicated (OMVWI), and five counts of misdemeanor bail jumping. Three of these five counts of bail jumping were based upon Jacobus' consumption of alcohol in violation of a condition of his release bond. [4] Pursuant to a plea agreement with the State, Jacobus entered ***45** *Alford* pleas [5] to three counts of bail ***902** jumping, only one of which was based solely upon his consumption of alcohol. Jacobus also entered *Alford* pleas to the count of disorderly conduct and two counts of OMVWI. The State dismissed the remaining two counts of bail jumping as part of this negotiated plea.

¶ 3 On August 18, 1992, the circuit court entered judgments of conviction for the three counts of bail jumping, one count of disorderly conduct, and two counts of OMVWI. The circuit court placed Jacobus on three years of probation, and ordered him to a ninety day alcohol commitment. The circuit court also imposed and stayed multiple jail sentences, on the condition that Jacobus successfully complete his probation.

¶ 4 On October 3, 1994, pursuant to a request from the Department of Corrections, the Monroe County Police took Jacobus into custody on a probation hold, based on several reported violations of his probation. Subsequently, the Department of Corrections served Jacobus with a formal notice of revocation. After Jacobus waived his right to a hearing, the Department of Corrections revoked his probation, and his stayed jail sentences went into effect.

¶ 5 On October 7, 1994, while in the Monroe County jail, Jacobus filed a petition for a writ of habeas corpus in the circuit court. Jacobus then filed a motion on October 11, 1994, in which he contended that he should be released from incarceration because ***46** Wis.Stat. § 51.45(1) prohibited the State from criminally prosecuting him in 1992 for bail jumping based upon his consumption of alcohol in violation of a condition of his release bond. At a habeas corpus hearing on November 4, 1994, the circuit court determined that § 51.45(1) did not prohibit the State from criminally prosecuting Jacobus for bail jumping, and therefore denied Jacobus' petition.

¶ 6 The court of appeals reversed, because it concluded that Wis.Stat. § 51.45(1) clearly prohibited the State from criminally prosecuting Jacobus for bail jumping based upon his consumption of alcohol in violation of a condition of his release bond.[6] *Jacobus,* 198 Wis.2d at 789, 544 N.W.2d 234. The court of appeals further determined that although the State may prohibit alcohol consumption as a condition of bail, parole, or probation, the only available penalty is revocation of the applicable status. *Id.* at 790, 544 N.W.2d 234.[7]

II.

2 ¶ 7 The right to petition for a writ of habeas corpus is guaranteed by the Wisconsin and United ***47** States Constitutions.[8] *State ex rel. Dowe v. Circuit Court for Waukesha County,* 184 Wis.2d 724, 728, 516 N.W.2d 714 (1994). "Habeas corpus is confined to situations in which there is a pressing need for relief or where the process or judgment upon which a prisoner is held is void." *Id.* at 728–29, 516 N.W.2d 714; *accord J.V. v. Barron,* 112 Wis.2d 256, 261, 332 N.W.2d 796 (1983). Therefore, a court will not grant a writ of habeas corpus when other adequate remedies at law exist. *Dowe,* 184 Wis.2d at 728–29, 516 N.W.2d 714.

¶ 8 In the present case, Jacobus essentially is contending that the circuit court lacked subject matter jurisdiction to convict him of bail jumping in 1992, because Wis.Stat. § 51.45(1) prohibits the State from criminally prosecuting an individual for bail jumping due to consumption of alcohol in violation of a ***903** condition of a bond. Therefore, if Jacobus' interpretation of § 51.45(1) is correct, he is entitled to habeas corpus relief.

3 4 ¶ 9 Accordingly, this case requires us to interpret Wis.Stat. § 51.45(1). Statutory interpretation presents a question of law which this court reviews *de novo,* without deference to the decisions of the lower courts. *E.g., State v. Petty,* 201 Wis.2d 337, 354–55, 548 N.W.2d 817 (1996); *State v. Williams,* 198 Wis.2d 516, 525, 544 N.W.2d 406 (1996). The goal of statutory ***48** interpretation is to ascertain and give effect to the legislature's intent. *E.g., State v. Sostre,* 198 Wis.2d 409, 414, 542 N.W.2d 774 (1996); *Williams,* 198 Wis.2d at 527, 544 N.W.2d 406. To accomplish this goal, a court first resorts to the plain language of a statute. *E.g., Sostre,* 198 Wis.2d at 414, 542 N.W.2d 774; *State v. Speer,* 176 Wis.2d 1101, 1121, 501 N.W.2d 429 (1993). If the intent of the legislature is clear from a statute's language, a court must give effect to this intent and look no further. *E.g., Williams,* 198 Wis.2d at 525, 544 N.W.2d 406; *Speer,* 176 Wis.2d at 1121, 501 N.W.2d 429.

5 6 ¶ 10 However, if a statute is ambiguous,[9] a court must examine the scope, history, context, subject matter, and object of the statute in order to determine the legislature's intent. *E.g., Williams,* 198 Wis.2d at 525, 544 N.W.2d 406; *Speer,* 176 Wis.2d at 1121, 501 N.W.2d 429. A statute is ambiguous if it is capable of being understood by reasonably well-informed persons in more than one way. *E.g., Williams,* 198 Wis.2d at 526, 544 N.W.2d 406; *Speer,* 176 Wis.2d at 1121, 501 N.W.2d 429. In addition, "[t]he interaction of two statutes can create an ambiguity, as can the interaction of words in the statute." *Village of Shorewood v. Steinberg,* 174 Wis.2d 191, 201, 496 N.W.2d 57 (1993); *accord State ex rel. Newspapers, Inc. v. Showers,* 135 Wis.2d 77, 87, 398 N.W.2d 154 (1987); *State v. Kenyon,* 85 Wis.2d 36, 49, 270 N.W.2d 160 (1978).

7 ¶ 11 We therefore must initially determine whether the legislature's intent is clear from the plain language of Wis.Stat. § 51.45(1). Section 51.45(1) provides: "It is the policy

of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcohol ***49** beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society." It is arguable that this language, on its face, prohibits the State from criminally prosecuting an individual for bail jumping due to consumption of alcohol in violation of a condition of a bond. However, § 51.45(17)(a) provides: "Nothing in this section affects any law, ordinance or rule the violation of which is punishable by fine, forfeiture or imprisonment." It is arguable that the plain language of this section allows for the prosecution of bail jumping due to the consumption of alcohol in violation of a condition of a bond, since this offense is punishable by fine or imprisonment under Wis. Stat. § 946.49. Accordingly, reasonably well-informed persons could interpret § 51.45(1), as it relates to § 946.49, differently due to the interaction of § 51.45(1) with § 51.45(17)(a). Since an ambiguity exists, we must consider the scope, history, context, and object of these statutes to ascertain the legislature's intent.

¶ 12 Wis.Stat. § 51.45 was created by Chapter 198, Laws of 1973 (Ch.198). Ch. 198 originated as 1973 Assembly Bill 589. According to an analysis of 1973 Assembly Bill 589 by the Legislative Reference Bureau (LRB): [10]

> This bill adapts the Uniform Alcoholism and Intoxication Treatment Act to Wisconsin law. Administered by the department of health and ***50** social services, **the proposal changes the present policy of making public drunkenness a criminal offense** and attempts to coordinate a comprehensive treatment program. (Emphasis added).
>
> ....
>
> **The bill does not affect present laws against drunken driving and other offenses ****904** committed under the influence of alcohol.** (Emphasis added).

This analysis indicates that the legislature intended to establish treatment programs for alcoholics and intoxicated persons rather than to allow prosecution of them for public drunkenness. [11] However, it also indicates that the legislature did not intend to change any additional criminal statutes other than those making public drunkenness a criminal offense.

8 ¶ 13 The Uniform Alcoholism and Intoxication Treatment Act (Uniform Act) provides additional insight into the legislature's intent, since Wis.Stat. § 51.45 was substantially based on this act. *See* LRB analysis to 1973 Assembly Bill 589. In fact, § 51.45(1) was taken directly from § 1 of the Uniform Act. The comment to § 1 of the Uniform Act states:

> **This section is intended to preclude the handling of drunkenness under any wide variety of petty criminal offense statutes**, such as loitering, vagrancy, disturbing the peace, and so forth. As the Crime Commissions pointed out, drunkenness by itself does not constitute disorderly conduct. ***51** The normal manifestations of intoxication—staggering, lying down, sleeping on a park bench, lying unconscious in the gutter, begging, singing, etc.—will therefore be handled under the civil provisions of this Act and not under the criminal law.

Uniform Act, § 1, comment (citing *District of Columbia v. Greenwell,* 96 Daily Wash.L.Rptr. 2133 (D.C.Ct.Gen.Sess. December 31, 1968)) (emphasis added). In addition, the Uniform Act indicates that states adopting similar acts are "expected to repeal all the relevant portions of their criminal statutes under which drunkenness is the gravamen of the offense...." *Uniform Act,* § 19, comment. [12] In Wisconsin, the legislature repealed Wis.Stat. § 947.03 (1971–72), which made public drunkenness a crime, [13] and Wis.Stat. § 974.04(1)(a) (1971–72), which made it a crime to enter a common carrier while intoxicated for purposes other than transportation within a single urban area. [14] The legislature did not repeal any other relevant criminal statutes. Accordingly, the comment to § 1 of the Uniform Act, and the legislature's repeal of §§ 947.03 and 947.04(1)(a), further indicate that the legislature intended to prohibit the prosecution of alcoholics and intoxicated persons only for public drunkenness under petty criminal offense statutes. [15] We therefore must ***52** consider the purpose of the bail jumping statute, to determine whether public drunkenness is the gravamen of the offenses with which Jacobus was charged.

9 ¶ 14 "The plain purpose of a bail jumping law is to deter those who have been released pending disposition of criminal charges from violating the conditions of their bond." *State v. Nelson,* 146 Wis.2d 442, 451, 432 N.W.2d 115 (Ct.App.), *review denied,* 147 Wis.2d 890, 436 N.W.2d 30 (1988). As further explained by the *Nelson* court:

> Bail jumping—violation of the conditions of a bond—is a 'violation of the law, a public wrong which is punishable by fine or imprisonment or both.' Because the offense 'diminishes the power of a court to control those properly within its jurisdiction and afflicts the court with detrimental effects,' it is itself made a crime.

Id. (citations omitted). [16] Therefore, bail jumping laws are intended not only to deter *****905*** bail jumping, but also to enhance the effective administration of justice in the courts. *Id.* Specifically, courts impose bond conditions with the intent to protect members of the community from serious bodily harm, prevent intimidation of witnesses, assure a defendant's future appearance in court, and prevent a defendant from violating the law. ****53*** *See* Wis. Const. art. I., § 8, cl. 2; Wis.Stats. §§ 969.01(1), 969.02(3)(d) & (4), 969.03(1)(e) & (2); *see also State v. Braun,* 152 Wis.2d 500, 511–12, 449 N.W.2d 851 (Ct.App.1989); *State v. Dennis,* 138 Wis.2d 99, 103, 405 N.W.2d 711 (Ct.App.), *review denied,* 139 Wis.2d 860, 415 N.W.2d 162 (1987). Prohibiting a defendant from consuming alcohol as a condition of his or her release bond certainly is in accord with these purposes.

¶ 15 We also consider it significant that the court of appeals has determined that bail jumping constitutes a separate offense for purposes of the Double Jeopardy Clause. Specifically, in *Nelson,* the defendant contended he could not be convicted of bail jumping and sexual assault, because the bail jumping charge was based entirely on the sexual assault; therefore, conviction of both offenses would constitute "multiple punishment" in violation of double jeopardy. *Id.* at 446, 432 N.W.2d 115. The court of appeals rejected this argument, because it determined that bail jumping and the conduct underlying a bail jumping charge are "distinct and separate offenses." *Id.* at 449, 432 N.W.2d 115; *see also State v. Harris,* 190 Wis.2d 718, 724, 528 N.W.2d 7 (Ct.App.1994), *review denied,* 531 N.W.2d 328 (1995) (bail jumping and underlying offense are separate offenses for purposes of double jeopardy).

10 ¶ 16 Where the State prosecutes an individual under Wis.Stat. § 946.49 for bail jumping, the focus of the prosecution is on the fact that the individual has violated a condition of his or her bond. The focus is not on the underlying act. This is illustrated by the fact that in order to convict an individual under § 946.49, the State need only prove: (1) the individual has been ****54*** released from custody on bail; and (2) the individual has intentionally failed to comply with the terms of his or her bond. *Nelson,* 146 Wis.2d at 449, 432 N.W.2d 115.

11 ¶ 17 Applying this rationale to the present case, when the State prosecutes an individual for bail jumping due to consumption of alcohol in violation of a condition of a bond, the State is prosecuting the individual for failing to comply with the bond condition. The State is not prosecuting the individual for public drunkenness or the consumption of alcohol. Accordingly, public drunkenness is not the gravamen of the offense. *See Uniform Act,* § 19, comment. Since the State is not subjecting the individual to criminal prosecution for his or her consumption of alcohol, Wis.Stat. § 51.45(1) does not prohibit such prosecution.

¶ 18 In conclusion, we hold that Wis.Stat. § 51.45(1) does not prohibit the State from criminally prosecuting an individual under Wis.Stat. § 946.49 for bail jumping due to consumption of alcohol in violation of a condition of a bond. Moreover, the legislative history of §§ 51.45(1) and (17)(a) supports our holding, since it indicates that the legislature intended to prohibit only the prosecution of individuals for public drunkenness, not for other offenses.

The decision of the court of appeals is reversed.

All Citations

208 Wis.2d 39, 559 N.W.2d 900

Footnotes

1 *State ex rel. Jacobus v. State,* 198 Wis.2d 783, 544 N.W.2d 234 (Ct.App.1995).

2 Section 51.45(1) provides: "It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcohol beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society."

All further references are to the 1991–92 Statutes unless otherwise indicated.

3 Section 946.49 provides:

> (1) Whoever, having been released from custody under ch. 969, intentionally fails to comply with the terms of his or her bond is:
>
> (a) If the offense with which the person is charged is a misdemeanor, guilty of a Class A misdemeanor.
>
> (b) If the offense with which the person is charged is a felony, guilty of a Class D felony.
>
> (2) A witness for whom bail has been required under s. 969.01(3) is guilty of a Class E felony for failure to appear as provided.

4 The cases corresponding to these counts are: 92CM256 (three counts of misdemeanor bail jumping based upon consumption of alcohol); 92CM127 and 92CM140 (two additional counts of bail jumping)' 92CT95 and 92CT148 (OMVWI); and 92CM99 (disorderly conduct).

5 *See North Carolina v. Alford,* 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). An *Alford* plea is a guilty or no contest plea in which the defendant either maintains his or her innocence or does not admit that he or she committed the crime. *State v. Smith,* 202 Wis.2d 21, 23 n. 1, 549 N.W.2d 232 (1996); *State v. Garcia,* 192 Wis.2d 845, 857, 532 N.W.2d 111 (1995).

6 The court of appeals initially concluded that Jacobus had not waived his right to contest his incarceration by entering the *Alford* pleas. The parties have not raised the waiver issue on review before this court; therefore, we do not consider it.

7 Jacobus has proceeded *pro se* throughout the habeas corpus proceedings. However, this court invited the Legal Assistance to Institutionalized Persons Project (LAIP) of the University of Wisconsin Law School to file a nonparty brief under Wis.Stat. § 809.19(7) in support of Jacobus. LAIP accepted this invitation. We have carefully considered all arguments made by LAIP, as well as the parties, in their respective briefs. The court did not hear oral arguments in this case.

8 Specifically, article I, section 8(4) of the Wisconsin Constitution provides: "The privilege of the writ of habeas corpus shall not be suspended unless, in cases of rebellion or invasion, the public safety requires it." Similarly, article I, section 9 of the United States Constitution states in pertinent part: "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

9 Both LAIP and the State argue that the statute is ambiguous.

10 This court has indicated that analysis by the LRB is significant in determining legislative intent. *Stockbridge School Dist. v. Department of Pub. Instruction Sch. Dist. Boundary Appeal Bd.,* 202 Wis.2d 214, 225, 550 N.W.2d 96 (1996); *City of Milwaukee v. Kilgore,* 193 Wis.2d 168, 184, 532 N.W.2d 690 (1995).

11 This conclusion is also supported by a fiscal note found in the drafting file of 1979 Assembly Bill 589, which states: "This bill eliminates the criminal statutes relating to public drunkenness and substitutes treatment programs."

12 This comment is especially persuasive here because Wis.Stat. § 51.45(17)(a) (initially numbered § 51.45(18)(a) in 1979 Assembly Bill 589) was nearly identical to § 19(c) of the Uniform act in the original bill.

13 *See* § 32 of Ch. 198; Wis.Stat. § 947.03 (1971–72).

14 *See* § 33 of Ch. 198; Wis.Stat. § 947.04(1)(a) (1971–72).

15 However, note that the bail jumping statute did not specifically list alcohol consumption as a possible condition of a bond. *See* Wis.Stat. § 946.49 (1971–72). Therefore, the fact that the legislature did not repeal § 946.49 does not conclusively indicate that the legislature intended this statute to remain in force.

16 The court similarly indicated that bail jumping has been characterized as an affront to the power and dignity of the court, and therefore is considered a serious offense. *State v. Nelson,* 146 Wis.2d 442, 451, 432 N.W.2d 115 (Ct.App.), *review denied,* 147 Wis.2d 890, 436 N.W.2d 30 (1988).

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